

UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Swissmarine Services, SA,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION 1:19cv01143
vs.	§	
	§	IN ADMIRALTY, Rule 9(h)
XCoal Energy and Resources, et al.,	§	
	§	
Defendant and Garnishees.	§	

PROCESS OF MARITIME ATTACHMENT AND GARNISHMENT

TO GARNISHEE: PNC BANK, NATIONAL ASSOCIATION
C/O Corporation Service Company d/b/a CSC-Lawyers Incorporating
Service Company, Registered Agent
211 E. 7th Street, Suite 620
Austin, TX 78701-3218 USA

THE PRESIDENT OF THE UNITED STATES OF AMERICA

THE UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF TEXAS,

GREETINGS:

WHEREAS, Plaintiff Swissmarine Services, SA filed a Verified Original Complaint in the United States District Court for the Western District of Texas on November 22, 2019, with a claim against Defendant XCoal Energy and Resources in an amount of at least **\$1,631,799.92**, (herein, the “Garnishment Amount”), with a prayer for process of maritime attachment and garnishment against the property of said Defendant, accompanied by an Affidavit pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure stating that, to the best of affiant’s knowledge, or on information and belief, the Defendant cannot be found within the District, together with a Motion for Issuance of Process of Maritime Attachment and Garnishment, and

WHEREAS, the Court reviewed the Verified Original Complaint and Affidavit and found that the conditions of Rule B appeared to exist and entered an Order so stating and authorizing the issuance of process of maritime attachment and garnishment;

NOW THEREFORE, we hereby do empower, strictly charge and command you, the said Marshal, (1) to cite and admonish Defendant if it be found in your District, to appear before the United States District Court for the Western District, at the United States District Courthouse, 501 West Fifth Street, Austin, Texas 78701, within the time prescribed by law, then and there to answer the aforementioned Verified Original Complaint, and to make their allegations in their

behalf; and if the Defendant cannot be found in the Western District of Texas, (2) to cause service to be made on such garnishees or their agents in this District holding property including accounts of Defendant XCoal Energy and Resources, garnishing any tangible or intangible personal property, which belongs to, is the property of, is held in a fiduciary capacity for, or is otherwise claimed by Defendant, in an amount up to the Garnishment Amount.

We do further hereby empower, strictly charge and command you, the said Marshal, to instruct Garnishee, and its agents, to maintain custody and possession of the tangible personal property, including, but not limited to any accounts, which belong to, is the property of, is held in a fiduciary capacity for, or is otherwise claimed by Defendant and having served the warrant to make due and prompt return.

We do further hereby empower, strictly charge and command you, the said Marshal, to execute this writ by leaving with the Garnishee a copy of the complaint and process requiring the Garnishee to answer as provided in Rule B(3)(a) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure; or you may accept for payment into the registry of the Court the amount owed to the extent of the amount claimed by Plaintiff with interest and costs.

We do further empower, strictly charge and command you, the said Marshal, to notify the Defendant and Garnishees as follows:

- (1) An attachment and garnishment has been filed pursuant to Rule B of the Supplemental Rules of Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure against XCoal Energy and Resources, Defendant in this action;
- (2) Garnishees are required to file with the Clerk of the United States District Court for the Western District of Texas, with copy to the Plaintiff's attorneys Michael J. Smith, The Fowler Law Firm PC, 8310 N. Capital of Texas Hwy., Suite 1-150 Austin, Texas 78731 and J. Stephen Simms, Simms Showers., LLP, 201 International Circle, Suite 250, Baltimore, Maryland 21030, within twenty-one (21) days from the service of this Writ, a report, under oath, setting forth in detail all debts owing by Garnishee to Defendant; all property of Defendant in the possession, custody or control of Garnishee or to which the Garnishee hold legal title; all property which is held by Garnishee as fiduciary in which the Defendant has an interest; and whether any property attached is immune or exempt from attachment; unless, if intangible property is attached, Garnishee provides to the Marshal for payment into the registry of the Court the amount owed to the extent of the amount claimed by Plaintiff with interest and costs, in which event Garnishee shall not be required to answer;
- (3) Garnishee is required to promptly forward a copy of this Writ to Defendant;
- (4) Defendant is required to file with the Clerk of the United States District Court for the Western District of Texas, with copy to the Plaintiff's attorneys, Michael J. Smith, The Fowler Law Firm PC, 8310 N. Capital of Texas Hwy., Suite 1-150

Austin, Texas 78731 and J. Stephen Simms, Simms Showers., LLP, 201 International Circle, Suite 250, Baltimore, Maryland 21030, within thirty (30) days of service of this Writ, an answer to Plaintiff's Verified Original Complaint.

- (5) A hearing of any objections which might be raised by Defendant, or the Garnishees herein, under Rule E(4)(f) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure may be scheduled by calling the case manager of the United States District/Magistrate Judge in this case.

Witness, the Honorable Judge of the United States District Court for the Western District of Texas, this 27th day of November 2019.



JEANNETTE J. CLACK

United States District Clerk for the
Western District of Texas

By: Deanna Massie
Deputy Clerk

NOTE: This process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.